

Inderjit v. Kamal Kishore, 2017 PLRonline 0106 (P&H)

PUNJAB AND HARYANA HIGH COURT

Before : Justice G.S.Sandhawalia

INDERJIT & another – Petitioners,

Versus

KAMAL KISHORE – Respondent.

CR No.3106 of 2016(O&M)

16.01.2017

Rent - Mesne profits - The said order does not depict that whether any registered lease deed was taken into consideration while fixing the mesne profits - The issue is no longer res integra - It has been time and again held that the fixation of mesne profits is to be on the basis of some registered documents and it cannot be fanciful, at the discretion of the Court - In the absence of any such registered lease deed being produced by the respondent-landlord, this Court is of the opinion that the order itself is not sustainable and is liable to be set aside.

None for the petitioners. *Mr.Arun Jindal*, Advocate, for the respondent.

G.S. SANDHAWALIA, J. (Oral) – Petitioner-tenant has challenged the order dated 31.03.2016 (Annexure P4) passed by the Appellate Authority, Patiala whereby the mesne profits had been fixed at Rs.10,000/- per month, from the date of eviction order, i.e., 16.03.2016.

2. A perusal of the impugned order goes on to show that the rate of rent was Rs.175/- of the shop situated at Arya Samaj Chowk, Patiala, which was rented out in the year 1973. The said order does not depict that whether any registered lease deed was taken into consideration while fixing the mesne profits. The issue is no longer res integra. It has been time and again held that the fixation of mesne profits is to be on the basis of some registered documents and it cannot be fanciful, at the discretion of the Court. In the absence of any such registered lease deed being produced by the respondent-landlord, this Court is of the opinion that the order itself is not sustainable and is liable to be set aside.

3. The law on the said issue is that once the order of eviction has been passed, the contractual rate of rent inter se the parties comes to an end was laid down by the Apex Court in *M/s. Atma Ram Properties (P) Ltd. v. M/s. Federal Motors Pvt. Ltd.*, (2005-3)141 PLR 643 (SC). The view was followed in *Anderson Wright and Co. v. Amar Nath Roy*, (2005-3)141 PLR 666 (SC) and by a three-Judge Bench of the Apex Court in *State of*

Maharashtra v. M/s. Super Max International Pvt. Ltd., 2009 (9) SCC 772. It was further held that the amount of mesne profits should not be excessive, fanciful or a punitive amount. The relevant observations read thus:-

"In light of the discussions made above we hold that in an appeal or revision preferred by a tenant against a order or decree of an eviction passed under the Rent Act it is open to the appellate or the revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent. Needless to say that in fixing the amount subject to payment of which the execution of the order/ decree is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount."

4. This Court in *Surender Kumar v. Rattan Lal*, (2006-2)143 PLR 200, held that while fixing the mesne profits, registered lease deeds are a valid parameter and a toolbar to fix the mesne profits. It was held that the assessment should be on the basis of some relevant material and the tenant should be protected so that the amount which is to be deposited can be refunded in case the appeal is successful. The lease deeds also were to be of the same locality and of a similar building to show the prevalent rate of rent which the landlord was entitled during the pendency of the appeal of the tenant. The relevant observations read thus:-

*"8. The other questions that requires consideration is the mode of determination of the mesne profits or compensation payable. In this respect, it is appropriate to note that the same is to be done on the basis of materials placed on record by the parties. The parties would be at liberty to place cogent evidence by way of recent registered lease deeds of the locality to show their amount of rent which is payable. It is on the basis of such convincing material that a provisional assessment of the compensation/damages which the tenant is liable to pay the landlord pending his appeal or revision against an order of ejectment, can be determined. This provisional assessment that has been made would be subject to adjudication at the time of final disposal of the appeal or revision as the case may be. If the final adjudication by the appellate or revisional Court in respect of the damages or compensation payable by the tenant is at variance with the provisional order, the landlord would be liable to reimburse or refund the excess amount deposited by the tenant and in case of deficient deposit, the tenant shall be liable to make good the deficient amount. In fact in *Atma Ram Properties case* (supra), the Hon'ble Supreme Court held that reversal of interim orders passed at the interim stage due to final decision going against the party securing the interim order in its favour would entitle the successful party to demand (a) restitution of benefit earned by the opposite party under the interim orders or (b) compensation for what it has lost. It was observed that to grant such relief is the inherent jurisdiction of the Court and application of the above principle by analogy to support imposition of conditional or periodical deposit of reasonable sum in Court is the pre condition for grant of stay of execution of decree for eviction. Therefore, in case the party filing the appeal or seeking revision of the order is successful it would be entitled to restitution of the interim benefit which has been granted to the respondent in the appeal or the revision.*

Insofar as the objection of Shri M.L. Sarin, Senior Advocate as regards the inadmissibility of documents on account of the lease deed being inadmissible for want of registration, it is appropriate to note that there is no dispute to the said proposition that an un-registered lease deed signed by the lesser and lessee is inadmissible in evidence, as has been held in several decisions, c.f. Satish Chand Makhan v. Govardhan Das Byas , Bajaj Auto Limited v. Behari Lal Kohli A.I.R. 1989 S.C. 1606 and Anthony v. K.C. Ittoop and Sons and Ors. (2006) 6 S.C.C. 394. It has already been held that the provisional assessment is to be made on the basis of cogent and credible evidence which would necessarily mean that inadmissible evidence like unregistered lease deeds which are required to be registered compulsorily in terms of Section 17(1)(d) of the Registration Act, 1908 are not taken into account."

5. The Apex Court thereafter in *Mohammad Ahmad v. Atma Ram Chauhan*, (2011-2)162 PLR 711 (SC), laid down the principle that the market rent shall be worked out on the basis of valuation reports or reliable estimate of building rentals in the surrounding areas let out on the rent recently. The rent which was to be fixed should be proper and adequate keeping in mind the location, type of construction, accessibility to the main road, parking space facilities and it should not end up being a bonanza for the landlord. The principles laid down read thus:-

"(i)The tenant must enhance the rent according to the terms of the agreement or at least by ten per cent, after every three years and enhanced rent should then be made payable to the landlord. If the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back then the present market rent should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently.

(ii)Apart from the rental, property tax, water tax, maintenance charges, electricity charges for the actual consumption of the tenanted premises and for common area shall be payable by the tenant only so that the landlord gets the actual rent out of which nothing would be deductible. In case there is enhancement in property tax, water tax or maintenance charges, electricity charges, then the same shall also be borne by the tenant only.

(iii)The usual maintenance of the premises, except major repairs would be carried out by the tenant only and the same would not be reimbursable by the landlord.

(iv)But if any major repairs are required to be carried out then in that case only after obtaining permission from the landlord in writing, the same shall be carried out and modalities with regard to adjustment of the amount spent thereon, would have to be worked out between the parties.

(v)If the present and prevalent market rent assessed and fixed between the parties is paid by the tenant then the landlord shall not be entitled to bring any action for his eviction against such a tenant at least for a period of 5 years and the tenant shall enjoy immunity from being evicted from the premises.

(vi)The parties shall be at liberty to get the rental fixed by the official valuer or by any other agency, having expertise in the matter.

(vii) The rent so fixed should be just, proper and adequate, keeping in mind the location, type of construction, accessibility to the main road, parking space facilities available therein, etc. care ought to be taken that it does not end up being a bonanza for the landlord."

6. Faced with this situation, counsel for the respondent-landlord submits that he would be satisfied if the Appellate Authority is directed to decide the appeal, within a time-bound frame and at that point of time, the issue of mesne profits can also be decided along with the main appeal. He submits that the appeal is now listed for 06.02.2017.

7. A perusal of the ejectment order would go on to show that ejectment had been ordered on the ground of bona fide requirement of the landlord, who is a retired employee.

8. Keeping in view the above facts, the present revision petition is allowed and the order dated 31.03.2016 (Annexure P4) is set aside. The Appellate Authority, Patiala shall decide the appeal by 31.05.2017. The issue regarding the mesne profits be also decided, at the time of final hearing of the appeal.